



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 12.03.2025

+ **CRL.A. 177/2016**

ANNABELLE ANALISTA MALIBAGOAppellant
Through: Mr. Inderjeet Sidhu, Adv. DHCLSC

versus

DRIRespondent
Through: Mr. Satish Aggarwala, Sr. SC with
Mr. Gagan Vaswani, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an appeal seeking to challenge the impugned judgment dated 19.03.2014 and the order of sentence dated 26.03.2014 passed by learned ASJ (Special Judge-NDPS), Saket Court Complex, New Delhi wherein the learned Trial Court convicted the appellant for the offences under section 21(c) of the NDPS Act and sentenced to 10 years of rigorous imprisonment.
2. As per the available record, the appellant has completed the sentence and left India.
3. The facts of the present case that on 15.10.2008, the PW-1, Ms. Anju Singh received a secret information that a Philippian National (appellant)



would be travelling from Delhi to Hyderabad by the Spice Jet Flight No. SG-237, which was scheduled to depart at 05:20 PM on that day from the Terminal 1-B of the Domestic Airport of New Delhi and she will be carrying some narcotic drugs concealed in her buggage. PW-1 immediately reduced the said information in writing as Ex. PW-1/A and had put up the same before her senior officer/PW4 Sh. Ramesh Kumar, who in-turn, had further placed it before PW2 Sh. Nilank Kumar, who had directed for the immediate constitution of a raiding team for interception of the above passenger and seizure of the contraband.

4. A team of the DRI Officers had reached at the check-in counter of the above airlines at around 02:45 PM on that day and the officers of DRI had joined two public witnesses (employees of Spice Jet PW-8 and PW-12) informing them about the secret information.

5. At about 03:00 PM, a lady matching with the description given in the secret intelligence was seen going towards one of the check-in counters of the above airlines. When the lady passenger had handed over her strolley bag and tickets for check-in at the counter of the above airlines, she was intercepted and on inquiry her identity was revealed.

6. On taking out the clothes and belongings of the appellant from the said strolley bag, one black coloured back pack bag was found containing some old and used clothes. The bottom of the strolley bag was found abnormally thick and then the rivets inside the above bag were removed and upon breaking open the bottom of the said bag, one packet secured with brown adhesive tapes was found concealed in it.

7. The gross weight of the packet was found 1.345 kgs and the said packet was found to be containing some yellowish colour powder giving a



pungent smell. On testing a pinch of the above powdery substance with the help of the drug testing kit, the same had given positive results for heroin and the contents of the above packet were weighed and the net weight of the powder/heroin was found to be 1.240 kgs. The samples were drawn, kept in a separate polythene pouch and were given markings A1, A2 and A3.

8. Subsequently, other procedural formalities were also completed. The same was followed by the arrest of the appellant and her statement was recorded under Section 67 of NDPS Act (Ex. PW-1/G) and thereafter, she was arrested. The appellant also tendered her voluntary statement on 15-16 October 2008 (Ex. PW-1/H).

9. There are other instances where the appellant had visited China, Pakistan, etc. but the same are not relevant for the purpose of adjudicating the present appeal.

10. After completion of investigation, respondent filed the complaint against the appellant on 09.04.2009 and thereafter, the charges were framed against the appellant on 29.09.2009.

11. Respondent examined total 16 witnesses to prove their case whereas none by the appellant. Learned Trial Court, after considering the evidences and documents placed on record, has been pleased to pass the impugned judgment holding the appellant guilty under section 21(c) of NDPS Act and sentenced the appellant for rigorous imprisonment of 10 years.

12. Ms. Sidhu, learned counsel for DHCLSC has addressed arguments on behalf of the appellant and states that the procedural formalities were duly complied with. Her limited submission is with regard to the contradictions in the testimony of the police witnesses (PW-1, 4 and 15)



vis-a-vis public witnesses (PW-8 and 12) *qua* the interception and ownership of the strolley bag.

13. She states that the testimony of PW-15 has been disbelieved by the learned Trial Court whereas the testimonies of PW-8 and PW-12 have wrongly exhibited the strolley bag (from where the contraband was recovered). PW-1 and PW8 in their testimony have exhibited the strolley bag as P-10 whereas PW-12 has exhibited the strolley bag as P-12. Hence, the bag itself is doubtful and once there is ambiguity in the testimony of the prosecution, the benefit of the same must accrue in favour of the appellant.

14. I have heard learned counsel for the parties and perused the material available on record.

15. It is relevant to note that the said ground taken by the learned counsel for the appellant was neither argued before the learned Trial Court nor raised in the present appeal.

16. Be that as it may, in the present case, all the witnesses have identified the strolley bag which was seized from the appellant. There is no dispute with regard to the identity of the strolley bag. The only dispute is with regard to putting exhibit number.

17. In evidence, marking of exhibit is a procedural step to give identification/mark to the said evidence, marking does not impact the authenticity or credibility of the evidence. If the said evidence is marked more than once or twice, it does not undermine the admissibility of that evidence. Also, the marking of exhibit has no relation with its proof. The discrepancies in marking of the exhibit is just a technical plea which does not go to the root of the matter nor effects the merits of the case.

18. Relevant paragraphs from the impugned judgment are extracted



below:-

“40. Thus, it is clear from the above depositions made by the above four material witnesses of prosecution story, i.e. the IO/PW1, PW4, PW8 and PW12, that the accused was apprehended from the check-in counter of the above airlines when she had already handed over her ticket and the above strolley bag for check-in to the officials of the above airlines. They have also made consistent and corroborative depositions record on regarding the manner in which the above heroin packet was recovered from the false cavity of the above strolley bag. They all further corroborate each other on the aspect that one security check sticker was found affixed on the lock of the above strolley bag and the said lock was opened with the key provided by the accused herself. The sealed parcel of the above strolley bag, as well as the other personal articles and effects of the accused put in the said parcel, was also produced for identification during the examination of the IO/PW1 and the above two public witnesses and they all had identified the above bag having a false cavity and the same, alongwith its lock and key and the other articles and cloths etc, is Ex. P12 on record.

41. The oral depositions made by the above witnesses also stand duly corroborated by the contents of the panchnama Ex. PW1/C drawn at the spot, which though is not signed as a witness by PW4, but is found to be signed by the above two public witnesses, besides the IO/PW1 and the accused herself. Even the copies of the e-tickets of journey of the accused Ex. PW1/D and PW1/E recovered from the possession of the accused and the security check sticker number



829923 found affixed on the lock of the above strolley bag of the accused are also found to be bearing the signatures of all the above persons. Though, there are some contradictions in the testimonies of the above witnesses as to whether the lock of the above bag was opened by the accused herself or by the IO, but the same is not found to be material as they all corroborate each other that it was opened with the key provided by the accused and the same also belonged to the accused. Though, Ld defence counsel has argued that the above security check sticker could not have been affixed upon the above strolley bag till the time the boarding pass was issued to the accused, but this submission of Ld defence counsel is not found to be tenable as the above security check sticker was affixed on the lock of the said baggage as a proof of the clearance of the above baggage for security purposes, as it has been specifically brought on record in the evidence that the accused had already cleared the X-ray machine and had handed over the above baggage for check-in and the same was lying on the weighing machine when it was intercepted by the IO/PW1, and the evidence nowhere suggests that the boarding pass of the accused was also issued to her. Since, the accused was intercepted prior to the issuance of the boarding pass to her, the non availability of a boarding pass cannot be made a ground to disbelieve the consistent and corroborative depositions of the above witnesses regarding the check-in of the above luggage of the accused and the recovery of the above seized heroin therefrom.

42. During her statement recorded in this court U/s 313 Cr.P.C.,



though the accused has specifically admitted her apprehension by the DRI officers from the above airport, but she has claimed that she was not apprehended from the check-in counter and was actually apprehended from a big hall and further that the above checked-in baggage Ex. P12, from which the above heroin was allegedly recovered, did not belong to her. However, the above submission and defence of the accused in disowning the above bag is a very vague defence and the same has also remained unsubstantiated and it cannot over ride the consistent and corroborative depositions of the above two official witnesses of DRI as well as the two panch witnesses to the effect that the same belonged to the accused and was seized just after the accused had handed over the said bag to the official at a check-in counter of the above airlines. The IO/PW1 has specifically denied the suggestions given during her cross examination that the above baggage Ex. P12 did not belong to the accused and no other witness of recovery was given any such suggestion by the Ld defence counsel. Though, the accused has vaguely claimed that the above air tickets were not recovered from her possession and she was yet to buy her tickets for her journey to Hyderabad at the time when she was picked up from the airport, but the above claim of the accused could not be substantiated during the trial and rather, the evidence led on record is found to be sufficient to establish the factum of recovery of the above tickets from her possession. No defence evidence has also been led on record by the accused to substantiate her above defence and simply by disowning of the above bag or denying the recovery



of the above contraband substance from her above bag, the accused cannot nullify the effect of the oral as well as documentary evidence led by the prosecution on record against her on the above aspects.

43. Though, some other contradictions and discrepancies have also come on the record during the cross examination of the above witnesses on certain aspects, but none of them is found to be material in nature or going to the root of the prosecution case, so as to make it unworthy of acceptance or doubtful. The oral evidence led on record in the form of the testimonies of the official witnesses is duly supported by the documentary evidence on record and the same is thus found to be sufficient to prove on record the recovery of the above contraband substance from the possession or the above baggage of the accused.

.....

51. Therefore, the above statement Ex. PW1/H made by the accused U/s 67 of the NDPS Act is held to be her voluntary statement and the same duly corroborates the case of the prosecution not only on the aspect of recovery of the above contraband substance from the possession of the accused, but also on the aspect that the possession of the above substance by the accused was a conscious possession. Moreover, the above statement of the accused is not the only evidence available to this court to establish the guilt of the accused and the same is only a corroborative evidence of the other oral and documentary evidence led on record by the prosecution for establishing its case against the accused for possessing the above contraband substance and being conscious of its possession.”



19. In view of the clear testimonies of the witnesses i.e. PW-1, PW-4 and independent witnesses PW-8 and PW-12, I find no infirmity in the impugned judgment and does not require any interference. The testimonies of the witnesses are consistent. Additionally, the packet of heroin was recovered from the cavity of the strolley bag. Further, the strolley bag was having stickers and the strolley bag was opened by the keys provided by the appellant herself.

20. For the said reasons, the appeal is devoid of merits and hence the same is dismissed.

JASMEET SINGH, J

MARCH 12, 2025/DM

(Corrected and released on 26.03.2025)

Click here to check corrigendum, if any